

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 162 OF 1992.

~~T.A. NO.~~

DATE OF DECISION 16-12-1994.

Bhanulal Tapulal Kanada, Petitioner

Mr. P.H. Pathak, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondents

Mr. R.M. Vin, Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman.

The Hon'ble Mr. K. Ramamoorthy, Admn. Member.

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Bhanulal Tapulal Kanada
Shiv Bhavan
Kadiya Plots, Mill para
Porbandar.
(Advocate: Mr. P.H. Pathak)

..... Applicant.

Versus

1. Union of India
Notice to be served through
The General Manager (WR)
Churchgate, Bombay.
2. Divisional Operating Superintendent (E)
Western Railway,
Bhavnagar Para
Bhavnagar.

..... Respondents.

(Advocate: Mr. R.M. Vin)

ORAL JUDGMENT

O.A.No. 162 OF 1992

Date: 16-12-1994.

Per: Hon'ble Mr. N.B. Patel, Vice Chairman.

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The applicant challenges the order Annexure A dated 13-3-92, passed by DOS Bhavnagar, whereby he is purported to have been posted as Platform Porter Porbandar from his ^{present} ~~lien~~ post of Khalasi to T.I Porbandar. Annexure A shows that one Mr. D.K. Dabhi, who was working as Platform Porter at Porbandar, was posted as Khalasi to T.I Porbandar and the applicant was posted as Platform Porter vice the said Mr. Dabhi. The applicant seeks a declaration that his posting as Platform Porter from the post ^{held} ~~then had~~ by him as Khalasi amounted to change of his cadre or category and, as it was done without his consent and in the absence of any request by him, it was bad. The

..... 3/-

applicant has asserted that there are separate cadres of Platform Porter, and Khalasis or they belong to separate categories and separate seniority lists are maintained for the said respective cadres or categories and there are separate avenues of promotion for the said two cadres or categories. The applicant has contended that shifting him from the cadre or category of Khalasi to Platform Porter will adversely affect his seniority and his chance of promotion and therefore, also the order at Annexure A is illegal. The applicant ~~also~~ contends that it would be illegal to transfer him from the cadre or category of Khalasi to ^{the} cadre or category of Platform Porter without his consent or otherwise than at his request.

2. In the reply filed by the Railway Administration, it is contended that the posts of Khalasis and Platform Porters belong to the same cadre or category and, therefore, there is nothing illegal in the transfer of the applicant from the post of Khalasi to the post of Platform Porter, even though it may be ^{effected} ~~effecting~~ without his consent or without there being any request made by him in that behalf. It is also contended in the reply that, since the post of Platform Porter and Khalasis are in the same cadre, none of the conditions of service of the applicant or his seniority or prospectsⁿ of promotion are ~~a~~ affected.


3. It is well-established, as contended by the applicant, that an employee can not be transferred from one cadre to another without his consent and such a


transfer can be made only by way of deputation. It is also well-established that such a transfer ^{may} ~~can~~ be made at the request of the consent employee, but, in that case, normally, he has to agree to his being placed at the bottom of the seniority list of the cadre to which he is transferred at his request.

4. In the present case, in the rejoinder also, the applicant has very categorically and emphatically asserted that Platform Porter and Khalasi to T.I ^{form} ~~firm~~ ^{two} ~~it~~ distinct and separate cadres or categories and separate seniority lists are published for the respective cadres and categories. In para 6 of the rejoinder, it is averred that seniority list of Platform Porters is published by an order dated 1.3.89 whereas seniority list of Khalasi is published by an order dated 17.4.90. It is also averred in the same paragraph of the rejoinder that Group 'D' employees working in Traffic Department are divided in five groups namely, (1) Platform Porter/Gateman (2) Safaiwala Gateman (3) Hamal/Loader, Travelling Hamal, Porter, Seal man etc. (4) Water man, Travelling Waterman, Bhisties and (5) Waiting Room Bearer, Tele Peon, Seal man, Khalasi etc. It is also averred that separate seniority lists are issued for these groups. The applicant has also pointed out in the rejoinder that there is a circular dated 2.8.83 containing detailed instructions for effecting change of category and that it is in force "even today". The contention of the applicant is that the transfer of the applicant is made in contravention of this circular which stipulates that change of category or cadre can ^{be made} ~~not change~~ without the written request or consent of the concerned employee.

5. The aforesaid categorical averments made by the applicant, both in his application and in the rejoinder, are not refuted by the Administration by producing any material on record to show that these averments are not true. No material is produced in this case to show that Platform Porters and Khalasis have a common seniority list and the posts are interchangeable. The mere averments, in the ^{Reply} rejoinder and in the application filed by the respondents for vacating of the interim relief, that the posts belong to the same cadre or group is not sufficient for the refutation of the emphatic averments made by the applicant. Confining ourselves, therefore, to this particular case, we hold that the applicant has proved that he does not belong to the category or group of Platform Porter to which ^{he is} ~~he~~ sought to be transferred from his category or group of Khalasis without his consent and otherwise than at his own request.

6. In the result, therefore, the application is allowed. The impugned transfer order, Annexure A, is quashed and set aside, insofar as it relates to the transfer and posting of the applicant as Platform Porter from his post of Khalasi. No order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman

vtc.